IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 7179 of 2007()

OS.89/2001 of PRINCIPAL SUB COURT,KOCHI
CC.413/2001 of J.M.F.C.-II, KOCHI
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PETITINER/ACCUSED:

JAGADISH S.BHAT,S/O.LATE N.S.BHAT
AGED 38, NOW RESIDING AT 23, GANDHI NAGAR
COIMBATORE.

BY ADV. SRI.N.RATHEESH

RESPONDENTS: COMPLAINANT & STATE:
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1. **THE STATE OF KERALA,REPRESENTED BY THE SUB INSPECTOR OF POLICE, MATTANCHERRY THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

2. **A.RAJMOHAN,S/O.K.ANANTHA PAI, AGED 44 YEARS,RESIDING AT C.C.VIII/694, MATTANCHERRY, COCHIN-2.**

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R. BASANT, J.

B.A. No. 7179 OF 2007

Dated this the 21st day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment in a prosecution under section 138 of the Negotiable Instruments Act, 1881. Cognizance has been taken by the learned Magistrate. The petitioner had appeared before the learned Magistrate earlier and he was enlarged on bail, it is submitted. But, subsequently, on account of the non-appearance of the petitioner, warrant of arrest has been issued by the learned Magistrate against the petitioner.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. The complainant had agreed to withdraw the case. But it is now realised that he is not willing. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He has, therefore, come to this court with a prayer that directions under Section 438 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. The learned Prosecutor opposes the application. The learned Prosecutor submits that the petitioner may be directed to surrender before the learned Magistrate and seek regular bail in the ordinary course.

4. It is for the petitioner to appear before the learned Magistrate and seek regular bail in the ordinary course. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in **Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339]**.

5. In the result, this petition is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

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